THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P. Nos. 1066, 1304, 12533 of 2006 & CC.No.234 of 2006

Date: 03.07.2006

WP.No.1066 of 2006

Between:

K. Rajesh Kanodia

... PETITIONER

AND

The District Collector, Ranga Reddy District
at Lakdikapool, Hyderabad & others.

... RESPONDENTS

WP.No.1304 of 2006

Between:

N. Dharma Lingam

... PETITIONER

AND

The District Collector, Ranga Reddy District
at Lakdikapool, Hyderabad & others.

... RESPONDENTS

WP.No.1066 of 2006

Between:

P. Kumar

... PETITIONER

AND

The Kukatpally Municipality,
rep., by its Commissioner.

... RESPONDENT

COMMON ORDER:-

In view of the fact that almost common questions are involved in all these matters, the same are disposed of by this common order.

W.P.No.1006 of 2006 is filed praying for a writ of Mandamus declaring the action of the respondent in trying to demolish the boundary wall of the petitioner's open plot bearing Nos.23 and 24 situate in Sy.No.73 and 74 of Navajeevan Nagar, Ferozguda Village, Balanagar Mandal, Ranga Reddy District, in an extent of 520 Sq. yards without issuing any notice as contemplated under Section 191 and 192 of A.P. Municipalities Act, hereinafter in short referred to as Act, for removing of any unauthorized encroachments though petitioner is not an encroacher, as illegal, arbitrary, unconstitutional and violative of principles of natural justice besides Articles 14, 19 and 21 of the Constitution of India and consequently direct the respondents not to dispossess or demolish the compound wall of the petitioner on the above referred property without following the due process of law, and pass such other suitable orders.

It is stated by the writ petitioner that he is the absolute owner of the open plot situated in Plot Nos.23 and 24 in Sy.Nos.73 and 74 of Navajeevan Nagar, Ferozguda Village, Balanagar

Mandal, Ranga Reddy District, to an extent of 520 Sq. yards having purchased the same from its true owner through a registered sale deed bearing document No.6769 of 2005 dated 09.09.2005. It is stated that ever since the date of purchase of the said open plot, he had been in possession of the same. It is stated that on 03.10.2005 the 3rd respondent and his subordinates trespassed into the property and started taking measurements of the lands. The petitioner questioned the authorities as to why they were taking the measurements while informing them that the land is his exclusive private property and that they have no right to interfere with his peaceful possession and requested to stop the same. It is stated that the respondents informed the petitioner that the said lands are required for public purpose i.e., to lay the channel and for that purpose they are taking the measurements. The authorities directed the petitioner to vacate the lands or to face the forceful dispossession. It is stated that the petitioner on the very same day approached the authorities of the 1st respondent as well as the other dignitaries that the proposed action of the respondents is in violation of due process of law and the mandatory provisions of the Act. It is further stated that the 3rd respondent taking advantage of the Pongal vacation of the Courts, had dumped the machinery and men on 16.01.2006 and had demolished a portion of the compound wall in his plot and on coming to know the same, the petitioner brought to the notice of the 3rd respondent that without taking recourse to due process he cannot deprive even an encroacher. It is also stated that as per Section 282 of the Act, the duty is cast on the 3rd respondent to serve a notice even on an encroacher and the petitioner being the

absolute owner and possessor of the open plot, demolishing a portion of the compound wall and trying to lay the channel through his land without recourse to the acquisition proceedings or the procedure stipulated under Section 192 of the Act is in clear violation of Article 21 and 300-A of the Constitution of India. Under those circumstances, the petitioner had approached this Court.

A counter-affidavit is filed by the 3rd respondent denying the allegations. Specific stand was taken that originally the retaining wall and bridge from Kalyan Nagar to Navajeevan Nagar Nala had been sanctioned under the city challenging funds and the work was proposed and approved by the then Municipal council and the District Collector, Ranga Reddy District, vide proceedings No.43/8435/2003, dated 16.04.2003. The estimate was technically sanctioned and allotted the work to the contractor on 14.09.2005. It is further stated that the drainage/sewerage was flowing naturally since about 50 years. In the rainy season for the last few years the drainage flow was very high, and the surrounding localities had been developed and it is very much necessary to build a pucca retaining wall and bridge by widening the existing nala for free flow of drainage. It is further stated that as per the directions of the Hon'ble Court, the 3rd respondent along with staff, MRO and Mandal Surveyor, visited the lands in Sy.Nos.73 and 74 of Ferozguda Village on 01.02.2006. Subsequently, Tippons were called and inspected the land in the said survey numbers on 18.03.2006 and 19.03.2006 along with relevant revenue records and village maps.

It is also specifically averred in para 9 of the counter-

affidavit that as per the village map prepared in the year 1953 there is an existing tank called as Ferozguda Tank, on the northern side of the land in Sy.Nos.73 and 74, on the western side a nala running towards southern side for surplus water of the tank and the said nala was now defunct when it reached land in Sy.No.74 and the defunct nala was presently encroached by the third party's raising illegal constructions. On enquiry came to know that there was a breach of tank long ago due to which the water passed through lands in Sy.Nos.73 and 74 is continuing till now. The total extent of land in Sy.Nos.73 and 74 as per the records are Ac.0-32 guntas and Ac.1-04 guntas respectively.

It was further stated in para 10 of the counter-affidavit that the existing nala after breach passes through an extent of ½ gunta in Sy.No.73 and 10 guntas in Sy.No.74 of Ferozguda village and the width of existing canal at the point it passes through lands in Sy.Nos.73 and 74 were also measured by survey team and the width of nala at those points in Sy.Nos.73 and74 is 40 feet each.

Specific stand was taken that the petitioner did not come to Court with clean hands and there is no *prima facie* case or balance of convenience and the petitioner is not having *locus standi* to file the case and hence the same to be dismissed.

WP.No.1304 of 2006 is filed for a writ of Mandamus declaring the action of the respondents in trying to channeling the effluvium sewerage through the land of the petitioner situate in Sy.No.73 of Ferozguda Village, Balanagar Mandal, Ranga Reddy District to an extent of Ac.32-9 guntas, without issuing any notice and without following the procedure as contemplated under the

provisions of the A.P. Municipalities Act, as illegal, arbitrary, unconstitutional and violative of principals of natural justice besides Articles 14, 21 and 300-A of the Constitution of India, and consequently direct the respondents to initiate the proceedings for acquisition of the land and to adhear the mandatory stipulations under the Act and pass such suitable orders.

It is stated in the affidavit filed in support of the writ petition that the writ petitioner is the absolute owner of the open plot in Sy.Nos.73 and 74 of Ferozguda Village, Balanagar Mandal, Ranga Reddy District to an extent of
Ac.1-36 guntas having been purchased by his father from its true owners. It is further stated that he had converted the said lands into house sites after obtaining due permission from the Government and that ever since the date of purchase of the said land he had been in continuous possession and enjoyment of the same. It is also stated that the petitioner had sold away the land in Sy.No.74 to an extent of Ac.1-04 cents and he kept part of his land vacant in Sy.No.73 though the same was converted into residential plots, without creating any third party interest thereon. It is further stated that there is an effluvium channel abutting the land, which effluxes industrial wastage and sewerage, as wide as 5 meters. The channel emanates obnoxious smell and pollutes the ground water sources round in the area, which became a cause of complaint by several perennial residential inhabitants. It is also stated that the channel is not properly fenced or bounded by a retaining wall. Aggrieved by the inconvenience caused by the effluvium channel, several native residents of that area have complained the authorities to initiate necessary and expeditious

action, but unfortunately all their efforts were in vain.

It is further stated that recently in the month of September 2005 some authorities claimed themselves to be from the office of the 1st respondent had come to the petition schedule property and started conducting survey on it and when the petitioner questioned them as to why they were conducting survey, they replied that they wanted to construct a retaining wall to that effluvium channel abutting his land. It is also stated that they noticed some encroachments on that channel and they wanted to remove them. It is stated that the petitioner celebrated on that day as his perennial inconvenience was coming to an end and other native inhabitants of that area is also felt very happy. It is further stated that from the other end of his land, from the month of November, 2005 they started clearing up the debris abutting the effluvium channel with the help of their men and machinery. It is further stated that surprisingly having completed half of their work the respondents had changed the direction of their work and have started working in the western side of the property and according to the respondents there are several encroachments on that channel and there is a gossip according to which some officers of respondents are in hand and glove with some land grabbers in that vicinity by taking it to be an advantage. Those land grabbers had encroached more than six acres of land adjacent to Sy.No.75 abutting to that channel and sold it away to third parties. It is further stated that to the shock of the petitioner some of the officers of the 3rd respondent on 21.01.2006 had forcibly trespassed into his property with their men and machinery and demolished a portion of the compound wall bounding it and when

he questioned them about their behaviour, they replied that they have instructions from the 3rd respondent to do so. The specific stand taken by the petitioner is that when the State requires a private property for public purpose, the same to be acquired as per the procedure contemplated under law and there cannot be such forcible dispossession. Further, the stand taken by the petitioner is that the procedure under the Act had also not been followed.

The 3rd respondent filed counter-affidavit denying the allegations and also further pleaded in paras 6 to 11 as hereunder.

> "It is respectfully submitted that originally the retaining wall and bridge from Kalyan Nagar to Navajeevan Nagar Nala has been sanctioned under the city challenging funds and the work was proposed and approved by the then Municipal Council and the District Collector, Ranga Reddy District, vide proceedings No.43/8435/2003 dated 16.04.2003, the estimate was technically sanctioned and allotted the work to the contractor on 14.09.2005.
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> It is respectfully submitted that the drainage/sewerage was flowing naturally since about 50 years. In the rainy season for the last few years the drainage flow was very high and the surrounding localities has been developed and it is very much necessary to build a pucca retaining wall and bridge by widening the existing nala for free flow of drainage.
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> It is respectfully submitted that as per directions of the Hon'ble Court, this respondent along with staff and MRO, Mandal Survey, visited the lands in survey Nos.73 and 74 of Ferozguda village on 01.02.2006 subsequently tippons were called and inspected the land in the said survey numbers on 18.03.2006 and 19.03.2006 along with relevant revenue records and village maps.
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> It is respectfully submitted that as per the village

map prepared in the year 1953 there is an existing tank called as Ferozguda Tank, on the Northern side of the land in Sy.Nos.73 and 74 and 74, on the Western side a nala running towards Southern side for surplus water of the tank and the said nala was now defunct in it reached land Sy.No.74 and defunct nala was presently encroached by the third party's raising illegal constructions, on enquiry came to know that there was a breach of tank long ago due to which the water passed through lands in Sy.Nos.73 and 74 and continued till now. The total extent of land in Sy.Nos.73 and 74 as per the records Sy.No.73 to an extent of Ac.0-32 guntas and Sy.No.74 to an extent of Ac.1-04 guntas.

It is respectfully submitted that the existing nala after breach passes through an extent of ½ guntas in Sy.No.73 and 10 guntas in Sy.No.74 of Ferozguda village, the width of existing canal at the point it passes through lands in Sy.Nos. 73 and 74 were also measured by survey team and the width of nala at those points Sy.No.73 is 40 feet width at Sy.No.74 is 40 feet.

It is respectfully submitted that this respondent the nala retaining wall also constructed till ground level at the places, the nala passes through Sy.No.74 insofar as the point passes through Sy.No.73 is concerned, so far as the retaining wall is pending."

It is also brought to the notice of this Court that this Court made the following order on 25.01.2006.

"The petitioner alleges that the third respondent Municipality is constructing a sewage canal in the land belonging to him without due process of law. After getting instructions from his client, learned Standing Counsel submits that the work has been stopped and that initially the construction/strengthening of existing drainage canal was taken up with reference to the area where drainage/sewage was flowing. There is some ambiguity regarding the actual width of the existing drainage canal. This can be resolved by directing the

third respondent to conduct a joint inspection along with the second respondent immediately and submit a report to this Court within a period of one week from today."

WP.No.12533 of 2006 is coming along with other writ petitions. This writ petition is filed for a writ of Mandamus declaring the action of the respondents in trying to lay the effluent pipeline in the property belongs to the petitioner in plot bearing No.16 part situate in Sy.No.74 of Navajeevan Nagar, Ferozguda village, balanagar Mandal, Ranga Reddy District in an extent of 100 Sq. yards without issuing any notice as contemplated under Sections 191 and 192 of A.P. Municipalities Act for removing of any unauthorized encroachments though the petitioner not being an encroacher, as illegal, arbitrary, unconstitutional and violative of principles of natural justice besides Articles 14, 19 and 21 of the Constitution of India, and consequently direct the respondents not to dispossess/demolish the compound wall of the petitioner on the above referred property without following the due process of law and pass such other suitable orders.

It is stated that the petitioner is the absolute owner of the open plot situate in Plot No.16 part situate in Sy.Nos.73 and 74 of Navajeevan Nagar, Ferozguda village, Balanagar Mandal, Ranga Reddy District in an extent of 100 Sq. yards having been purchased the same by virtue of the registered sale deed dated 19.12.2001 and from the date of purchase the petitioner had been in continuous physical possession of the same. It is also further stated that on 09.06.2006 the respondent and his subordinates trespassed into the petitioner's property and started removing the basement of compound wall and on his questioning the authorities

as to why they are taking measurements while informing them that the land is exclusive private property of the petitioner and that they no right to interfere with his peaceful possession and requested to stop the same, the subordinates of the respondent informed him that the lands are required for a public purpose to lay the channel and for that purpose they were taking the measurements. It is also further stated in para 5 of the affidavit filed in support of the writ petition that how the men of the respondent had dumped the machinery on 17.06.2006 and had committed certain other acts.

CC.No.234 of 2006 is filed praying to punish the respondents for their willful violation and deliberate disobedience of the orders of this Court passed in WPMP.No.1162 of 2006 in WP.No.1006 of 2006 dated 17.01.2006. The interim direction granted by this Court is that respondents are directed not to dispossess the petitioner without following due process of law. It is stated that the same had not been followed and hence the contempt case is filed.

Submissions, at length, were made by the counsel on record. The counsel representing the petitioners asserts that the title to the property is not in dispute. Merely because the nala has been passing through the private land, that does not mean the petitioners are not the owners of the property and the only remedy available to the respondents would be to acquire the property in accordance with law. The counsel also would maintain that even in the light of the joint inspection report, the title to the property is not in serious controversy. Merely, because it is stated that the nala is passing through, for sufficiently a long time, it cannot be

said that there is any perfection of title by adverse possession. At best the possession continues and the title is not extinguished and hence the petitioners need not be prevented to approach a competent civil Court in this regard.

The learned counsel also would contend that even otherwise the petitioners put to be on notice relating to their removal in accordance with the provisions of the Act, in any view of the matter without following the procedure, they cannot highhandedly disturb the possession.

On the contrary, Sri Polishetty Radha Krishna, the learned counsel representing the contesting respondent – Municipality would submit that there are several disputed questions of fact inclusive of the question of title and hence the proper remedy is to approach the Civil Court and the said questions cannot be decided by this Court. The learned counsel had taken this Court through the joint inspection report conducted by the Commissioner, Kukatpally Municipality, Ranga Reddy District, which reads as follows:

> "As per the directions of the Hon'ble High Court dated 25.01.2006, I along with my staff and MRO, MRI and Mandal Surveyor visited the lands in Sy.No.73 and 74 of Ferozguda village on 1st February 2006. However, to measure the lands in the above numbers as the required Tippons maintained by the Assistant Director Survey and Land Records, Ranga Reddy District, were not available. We instructed the Mandal Surveyor to get the lands measured with the help of Tippons.
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> Subsequently after the Tipoons are made available by Survey Department, myself, MRO, MRI, Mandal Surveyor along with Town Planning Officer of Municipality inspected the lands in Sy.No.73 and 74 of

Ferozguda again on 18th March 2006 and 19th March 2006 along with the relevant revenue records and village map.

As per records the lands in Sy.Nos.3 and 74 are "Dastgardan Inams" and notified under the provisions of Telangana INAM Abolition Act 1955. After the abolition lands vested with the Government except those for which Occupancy Right Certificate were issued by component authority.

As per village map prepared in 1953, there existed a tank called "FEROZGUDA TANK" on the northern side of the lands in Sy.No.73 and 74. On the western side there was a nala running towards Southern side for passage of surplus water from the tank. The said nala was now defunct till it reached land Sy.No.74 and the defunct nala was presently encroached by 3rd parties raising illegal constructions. On our enquiry it is noticed that there was breach of tank long ago due to which the water passed through lands in Sy.No.73 and 74 and continue till now. The total extent of land in Sy.No.73 and 74 as per records is as follows:

Sy.No.73	0.32 guntas
Sy.No.74	1.04 guntas

The existing nala after breach passes through on extent of 0.1/2 gunta in Sy.No.73 and 0.10 guntas in Sy.No.74 of Ferozguda village. The width of existing canal at the point it passes through lands in Sy.No.73 and 74 were also measured by the survey team and the width of the nala at those points is as follows:

	Width
Sy.No.73	40 feet
Sy.No.74	40 feet

Our inspection also revealed that pursuant to the decision of the Municipality to strengthen the nala, retaining walls were also constructed till ground level at the places the nala passes through Sy.No.74. Insofar as the point it passes through Sy.No.73 in concerned so far the retaining wall has not been

started in view of the Court orders in WP.No.1006 of 2006 filed by K. Rajesh Kanodia.

At present the work of construction of retaining wall is stopped.

In this regard I am enclosing a sketch showing the details of nala is prepared.

I submit though the Hon'ble Court directed me to furnish report within 1 week, I could not complete the same for the reasons stated above. I pray the Hon'ble Court to pardon me and condone the delay in submitting the report."

On a careful reading of the report and also the stand taken in the counter-affidavit, no specific stand had been taken in relation to the denial of the title. *Prima facie*, the denial of title appears to be vague, maybe in such circumstances the learned Judge made the order as already referred to supra. The joint inspection report conducted by the Commissioner, Kukatpally Municipality and Deputy Collector and MRO, Balanagar Mandal, Ranga Reddy District is filed before this Court and the said report also referred to supra is self-explanatory. The fact whether the nala had been in existence for sufficiently a long time, whether by virtue of such action the title should extinguish or not, these questions cannot be gone into by the writ Court. However, in the light of the vague stand taken in this regard in the respective counter-affidavits and also in the joint inspection report referred to supra, it would be appropriate if the respondents are directed to put the petitioners on notice in accordance with the provisions of the A.P. Municipalities Act, follow the due procedure, pass appropriate orders and then further proceed with the work.

This Court is expressing this view especially in the light of the joint inspection report already referred to supra. In the present writ petitions, in the light of certain disputed questions of fact, this Court is inclined to dispose of these writ petitions with a direction to the Kukatpally Municipality to put the petitioners on notice, hear them and pass appropriate orders in this regard before further proceeding with the work.

Accordingly, the writ petitions are disposed of. On other questions, this Court is not expressing any further opinion in the light of the vague facts. No order as to costs.

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P.S. NARAYANA, J

Date: 03.07.2006
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